

Representation in Mediation or Conciliation

The following principles should be kept in mind when considering who is to participate in mediation or conciliation.

Purpose of Mediation/Conciliation

Mediation or conciliation is an opportunity for parties with a dispute or difference to have full and frank discussions between themselves in order to:

- Develop a better understanding of the problem they face
- Focus on their own real needs as well as those of the other party
- Weigh all practical options to resolve the dispute or improve the situation

Participants in a mediation or conciliation should accept and be prepared to act in accordance with this purpose.

Role of Legal Counsel

In keeping with the purpose of mediation/conciliation, it is **not** the role of legal counsel to represent or advocate on behalf of a party as they do in litigation. However, lawyers can play an important support role in mediation or conciliation by providing to their client:

- Advice concerning legal or practical questions that may arise in the course of the mediation/conciliation
- Information about the alternatives to agreement including costs, timing and likely outcomes
- Assistance in drafting the terms of an agreement

Legal counsel may carry out this role while attending the mediation/conciliation in whole or in part, or otherwise, as their client may choose.

Role of Parties

Again in keeping with the purpose of mediation or conciliation, it is important that a party participates directly and actively. Corporate bodies must be represented by the appropriate officer. The parties will decide the result of the process.

Mediation/conciliation facilitates re-thinking positions and re-evaluating alternatives in light of a better understanding of the problem. It may be difficult to fully inform non-participants of all the logical and practical reasons resulting in agreement. Therefore, it is highly desirable that a party's representative have full authority to commit to a resolution of the matter. A senior corporate executive may be required for this. Where this is not possible, quick communication with a final decision maker is essential.